

IN THE FOURTH DISTRICT COURT OF THE STATE OF UTAH
IN AND FOR UTAH COUNTY

PROVO RESERVOIR COMPANY, a
corporation,

Plaintiff.

-vs-

PROVO CITY, et al,

Defendants.

No. 2866.

SEPARATE ANSWER OF RUTH HATCH
AND ABRAM C. HATCH, AS EXECU-
TORS OF THE ESTATE OF ABRAM
HATCH, DECEASED.

Come now the defendants Ruth Hatch and Abram C. Hatch as executors of the last will and estate of Abram Hatch, deceased and answering the complaint of plaintiff, admit, deny and allege as follows:-

1.

These defendants admit all of the allegations of said complaint set forth in paragraph 1 to 27 inclusive.

2.

These defendants admit the allegations set forth in paragraphs 31-38 & 39 of plaintiff's complaint.

3.

Answering paragraphs 28-29-30-32 and 33 of plaintiff's complaint these defendants allege that they have no knowledge or information sufficient to form a belief as to the matters alleged in said paragraphs and therefore deny the allegations set forth in paragraphs 28-29-30-32 and 33.

4.

These defendants admit that the plaintiff claims the right as set forth in paragraph 34 of plaintiff's complaint, but allege that these defendants have no knowledge or information sufficient to form a belief as to the extent of plaintiff's rights as alleged in said paragraph 34.

5.

Answering paragraph 35 these defendants deny for themselves alone

the allegations thereof, except that these defendants claim and allege, that the plaintiff's rights to the use of the waters flowing in the Provo river and its tributaries at and above the points of diversion by the defendants, are all subject to prior rights of these defendants as hereinafter in this counter claim set forth.

6.

Answering paragraph 36 of plaintiff's complaint, these defendants deny that they or their predecessors in interest have used any water or waters from the Provo river or its tributaries in a wasteful manner and deny that they have diverted any water whatsoever in excess of the amount actually necessary to properly and beneficially irrigate the land to which the waters diverted ^{by} them are appurtenant, and these defendants deny that they have in any manner interfered with, prevented or hindered the plaintiff or any of its water users from receiving and using any water to which the plaintiff or any of its water users or assigns are entitled, and these defendants allege that they have no knowledge or information sufficient to form a belief as to whether other defendants in this action use water in a wasteful manner or as to whether other defendants interfere with, prevent and hinder plaintiff and its water users from receiving and using water to which it is entitled.

7.

These defendants admit that the decrees of the Fourth Judicial District Court of the State of Utah, were entered as alleged in paragraph 37 of plaintiff's complaint and allege that these defendants have no knowledge or information sufficient to form a belief as to the other allegations contained in said paragraph 37.

8.

These defendants deny each and every allegation of said complaint not hereinabove specifically admitted or denied.

Furthering answering said complaint and by way of counter claim these defendants allege, -

1.

That Abram Hatch died at Heber City, Wasatch County, State of Utah, on the 2nd day of December, A. D. 1911, and that thereafter, Ruth Hatch and A. C. Hatch, were, by order of the Fourth District Court of the State of Utah, in and for Wasatch County, duly appointed as executors of the last will and testament of Abram Hatch, deceased, and they ever since have been and now are the duly appointed, qualified and acting executors of the last will and testament of the said Abram Hatch, deceased.

2.

That the estate of Abram Hatch, deceased, of which these defendants are the executors, is the owner of 44 acres of cultivated lands and of 50 acres of pasture lands situated in the West one-half of Section 7, Tp. 3 S. R. 5 E. Salt Lake Meridian and of 12 acres of cultivated lands and 48 acres of pasture lands situated in the South one-half of the S. W. quarter of Section 6 Tp. 3 S. R. 5 E. Salt Lake Meridian, all in Wasatch County, State of Utah, all of which lands now are and for more than 30 years last past have been irrigated with water diverted from Provo river.

3.

That the 12 acres of cultivated lands and 8 acres of the 48 acres of pasture lands situated in the South one-half of the S. W. quarter of Section 6, Tp. 3 S. R. 5 E. Salt Lake Meridian, now are and have been for 30 years, irrigated by reason of a primary or low water right acquired by appropriation and use about the year A. D. 1884, and that the 40 acres of pasture land situated in the said South one-half of the S. W. quarter of Section 6, Tp. 3 S. R. 5 E. Salt Lake Meridian, now is and for 30 years has been irrigated during the high water season, by the high or flood waters of the said Provo river.

4.

That the 44 acres of cultivated land situated in the West one-half of Section 7, Tp. 3 S. R. 5 E. Salt Lake Meridian, now is and for 30 years has been irrigated during the low water season, by a primary or lowwater right from the said Provo river, acquired by appropriation and use about the year A. D. 1884, and that the 50 acres of pasture land situated in the said West one-half of Section 7 Tp. 3 S. R. 5 E. Salt Lake Meridian, now is and for 30 years has been irrigated by the high or flood waters diverted from the Provo river, that 10 acres of said 50 acres is irrigated by turning the said high or flood waters on said lands, and the other 40 acres of pasture land is irrigated by being covered with the flood waters of said Provo river during the high water season.

5.

That by the decree of the Fourth Judicial District Court in and for Wasatch County, State of Utah, entered in the case of Wasatch Irrigation Company, et al, vs. Edward Fulton et al, on the 6th day of May A. D. 1899, which was prior to the death of Abram Hatch, deceased, the said Abram Hatch, deceased was decreed $5/7$ second feet of the primary or low water from said Provo river as appurtenant to part of the cultivated lands her in above in paragraph 1, of this counter claim set forth, and that one Samuel Lee was decreed $1/7$ second feet of primary or low water of the said Provo river, and $2/7$ second feet of "Class 6" water rights as classified by said decree as appurtenant to other of said lands her in above in paragraph 1, of this counter claim described, and that subsequent thereto the said Abram Hatch acquired the title by purchase of all of the lands and water rights of the said Samuel Lee.

6.

That the duty of all the water decreed in the aforesaid decree in the case of Wasatch Irrigation Company et al, vs. Edward Fulton et al, which was 1, second foot to 70 acres of land, and that by virtue of said decree the said estate of Abram Hatch, deceased is

the owner of 60 acres of primary or low water right and 20 acres of 6th class water right all appurtenant to the lands situated in Sections 6 and 7 of Township 3 S. R. 5 E. Salt Lake Meridian, and that by virtue of the appropriation and use for a period of 30 years, the said estate of Abram Hatch, deceased, is the owner of and entitled to the use of sufficient quantities of the high waters of Provo river to irrigate 98 acres of the pasture lands situated in said sections 6 and 7 Township 3 S. R. 5 E. Salt Lake Meridian.

7.

That owing to the nature of the soil, the condition and situation of the said pasture lands, it will require water at the ratio or 1, second foot of water to 40 acres to properly irrigate said lands.

8.

That the right to the use of the water of said river decreed to the predecessors of these defendants, as hereinabove set forth, and the high or flood water of said river heretofore used upon the said lands, has never been used continuously upon said lands, but has been applied as the crops growing thereon required irrigation, at intervals of approximately every two weeks, and when so used has been used in large quantities so that the same might be economically and beneficially applied to the said lands for their proper irrigation, and that owing to the nature and kind of soil of said lands it is impracticable and impossible to properly and beneficially irrigate the same with a stream less than 4 or 5 second feet, as a smaller stream percolates through the soil and evaporates and can not be distributed or flooded over the said land so as to properly irrigate the same.

9.

The prior to A. D. 1879, the said Abram Hatch, deceased, acquired by appropriation and use the right to divert and use approximately 40 second feet of water of the said Provo river, measured at the out-flow of the water wheel, for the purpose of producing water power to run and operate a flour mill situated in the N. W. quarter

of Section 4 in Township 4 S. R. 5 E. Salt Lake Meridian, and that sufficient of the water of said river to operate said mill was, prior to the year A. D. 1879, and during each and every year since, has been diverted from said Provo river and conveyed to said grist mill through the canal owned and operated by the Wasatch Irrigation Company, a corporation, one of the defendants herein, and the Estate of Abram Hatch, deceased, and that said water after flowing through the water wheel at said flour mill was at all times and now is diverted back into one of the distributing canals of the said Wasatch Irrigation Company and by said company distributed to its stockholders and other persons entitled to the use of said waters for irrigation purposes, and that said use of said waters in producing power to run the said flour mill does not diminish the quantity thereof, nor divert any portion thereof so that it can not be used for irrigation purposes, and that approximately 40 second feet of water have been used for the purpose of running said flour mill during all of the time each and every year since the said appropriation and diversion of said water prior to A. D. 1879, when it was possible to run water through said canal to said flour mill.

WHEREFORE these defendants pray judgment,-

1.

That these defendants as executors of the Estate of Abram Hatch, deceased, be decreed to be the owner of 2 1/4 second feet of primary or low water right in said Provo river as and for water right to the said 12 acres of cultivated lands and 8 acres of pasture lands situated in the South one-half of the S. W. quarter of Section 6 in Tp. 3 S. R. 5 E. Salt Lake Meridian.

2.

That they as such executors be decreed to be the owners of 44 1/2 second feet of primary or low water right of said Provo river as and for the water right to the 44 acres of cultivated land situated in the West one-half of Section 7, Tp. 3 S. R. 5 E. Salt Lake Meridian.

3.

That in addition to the primary rights above prayed for, they be decreed one second ~~foot~~ of the high waters of said Provo river as and for the water right to the 40 acres of pasture land situated in the South one-half of the S. W. quarter of Section 6, Tp. 3 S. R. 5 E. Salt Lake Meridian.

4.

That as such executors they be decreed to be the owners of 1 1/4 second feet of the high waters of Provo river as and for a water right to the 50 acres of pasture land situated in the West one-half of Section 7, Tp. 3 S. R. 5 E. Salt Lake Meridian.

5.

That they as such executors be decreed the right to divert 40 second feet of the waters of Provo river through the canal of the Wasatch Irrigation Company, to be used for the purpose of producing power to run the flour mill mentioned in this counter claim, and after flowing through said mill to be again diverted into the lower distributing canal of the said Wasatch Irrigation Company to be distributed by said irrigation company to its stockholders and other parties entitled to use the said waters for irrigation purposes.

6.

That it be decreed that any water commissioner who may be appointed by the court to distribute the waters of Provo river to the parties entitled thereto, shall be directed to distribute to these defendants larger quantities of water at ~~regular~~ regular intervals, the quantity to be proportionate to the rights of these defendants to the use of waters of said river, so that their lands may be properly and economically.

7.

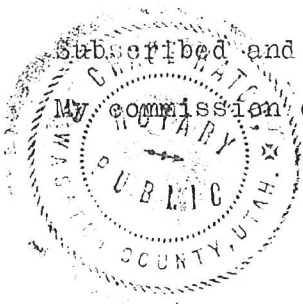
These defendants pray for such other and further relief as may be just and equitable and for their costs herein expended.

Charles Hatch.
Attorney for Defendants.

STATE OF UTAH,)
County of Wasatch,) ss.

Abram C. Hatch being first duly sworn deposes and says, that he is executor of the last will and estate of Abram Hatch, deceased, is one of the defendants who make the foregoing answer and counter claim, that he has read the said answer and counter claim and knows the contents thereof, that the same is true of his own knowledge except as to matters therein stated upon information and belief and as to those matters he verily believes it to be true.

Abram C Hatch



Subscribed and sworn to before me this the 11th day of May, 1914
My commission expires on the 16 day of October, 1916.

Levine Hatch
Notary Public.

